

OKLAHOMA ABSTRACTORS BOARD
MINUTES OF REGULAR MEETING
February 15, 2022

1. A regular meeting of the Oklahoma Abstractors Board (OAB) was called to order by Chairperson Randy Coffman at 10:00 a.m., at the OLERS Conference Room, 421 NW 13th Street, Suite 100, Oklahoma City, Oklahoma.
2. J. Thomas called the roll. Attending were: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward.
3. The Minutes of the Regular Meeting of the OAB, conducted on January 18, 2022, were reviewed. A motion was made by Mr. McDowell to approve the minutes as presented. The motion was seconded by Mr. Thomas. Motion carried.
Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.
4. **Chairperson's Report-Randy Coffman:** Mr. Coffman discussed Senate Bill 1609 and how it would repeal Title 1 and do away with the Abstractors Board. It would put the regulation of the industry under the Insurance Commission and give title agents the ability to have access to county records and there would be no requirement for an abstract. Also, no attorney's opinion would be required. There are some optional requirements. The primary function of the OAB is the protection of the consumer and these changes wouldn't do anything to protect those consumers. He wanted everyone to be aware of the proposed legislation.
5. **Administrator's Report (Board Report):** Ms. Smith has been providing information to OLTA about the OAB's activities to be related to the bill discussed by the Chairman.
6. **Committee Reports.**
 - a.) **Budget and Finance – Jeff Mapes:** Mr. Mapes gave an update on the budget reporting that the annual budget is \$280,955.00 with encumbrances of \$42,067.24, which gives us a total Year-To-Date Encumbrances and Expenses of \$169,925.66 and a variance of \$111,029.34. The revenue for the month of January was \$48,055.76 and expenses were \$20,923.55 which leaves us with an ending cash balance of \$848,246.84. After review and discussion, a motion was made by Mr. Mapes to approve the report as presented. Second by Ms. Ringo. Motion carried.
Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.
 - b.) **Rules and Regulations – Randy Coffman:** Ms. Smith reported that the information has been published and will be further discussed at the March Board meeting.
 - c.) **Licensing and Testing-Ken McDowell:** Mr. McDowell reported that there had been 6 people take the test and all but two passed. The next testing date is March 17th.

d.) **Inspections-Katherine Smith:** Ms. Smith reported that there had been no inspections since the last board meeting but pointed out that there is one Consent Order in the packet related to an inspection finding. She asked for a motion to accept the Consent Orders and authorization for the Chairperson to sign off on those orders. A motion was made by Mr. Ward. Second by Ms. Yates. Motion passed.
Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

e.) **Enforcement Committee Reports-Scott Ward:**

Applications for Licenses: Presented to the Board for approval was a list of applicants for abstract licenses or renewals, which are set out in the attachments hereto. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve all the licenses presented, subject to administrative review and to make sure all compliance issues were met, and appropriate fees paid. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

Abstention: Darla Ringo and Jeff Mapes abstained from voting on those licenses related to their company's interests.

Renewal of Certificate of Authority (With NO Fee Changes): Presented to the Board for approval were applications for renewal of Certificate of Authority with their rate sheet by Adams Abstract Company (Leflore), Adams Title Advantage, Inc. (Latimer), Clinton Abstract Company (Custer), Cordell Abstract, LLC (Washita), Cotton County Abstract, Eufaula Abstract & Title Company, Inc. (McIntosh), Grand River Abstract & Title Co. (Delaware), Great Plains Investments, LLC dba Bailey's Abstract & Title (Kiowa), The Guaranty Abstract Co of McClain County, Guaranty Abstract & Title of Stigler, LLC (Haskell), Love County Abstract Company, Inc., Mayes County Abstract Company, Muskogee Abstract & Title Company (Muskogee), SCA Title, LLC (Sequoyah), Osage County Abstract Company dba Smith Brothers Abstract, Pawhuska Abstract & Title Company dba Smith Brothers Abstract (Osage), Smith Brothers Abstract & Title Co, LLC - 0079 (Cherokee), Smith Brothers Abstract & Title Co, LLC – 0085 (Cherokee), Smith Brothers Abstract & Title Co, LLC (Beaver), Sooner Abstract & Title Company, Inc. (Leflore), Southwest Abstract & Title, LLC (Comanche), Oklahoma Abstract Company of Lawton dba Sovereign Abstract & Title of Comanche County, The Valley Abstract Co., Inc. (Garvin), and Woods County Abstract Corporation. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Mr. McDowell. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

Abstention: Darla Ringo, Jeff Mapes, and Rex Koller abstained from voting on those licenses related to their company's interests.

Renewal of Certificate of Authority (With Fee Changes): Presented to the Board for approval were applications for renewal of Certificate of Authority with their rate sheet by Beckham County Abstract, Cheyenne Abstract Company, Inc (Roger Mills), Chicago Title Oklahoma, Inc. (Cleveland), Chicago Title Oklahoma, Inc. (Oklahoma), Cochran Abstract Company (Grady), Creek County Abstract Co., Inc., and Sayre Abstract Company (Beckham). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Ms. Ringo. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

Fee Changes Only: Presented to the Board for approval were amended rate sheets by first American Title Insurance Company (Tulsa). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve fee changes. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

Abstention: Ken McDowell abstained from voting as it related to his company's interests.

Renewal of Permit to Build an Abstract Plant: Presented to the Board for approval was an application for the Renewal of a Permit to Build an Abstract Plant by Southern Oklahoma Abstract and Title, Inc. (Atoka).

A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the application. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

Complaints OAB-2022-W124 & OAB-2022-W125: Ms. Smith reported that both complaints were about closing issues and outside the scope of the Board's authority. The Enforcement Committee recommends closure of the complaints without further action. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the recommended closure. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.

7. **New Business:** Mr. Coffman asked for new business. There was none.
8. **Report Legal Counsel-Whitney Scimeca:** Ms. Scimeca reported that she had been working with the Enforcement and Rules Committees.
9. **Visitor's Comments:** Mr. Coffman asked for any visitor comments. Mitzi Combs reported that OLTA's Day at the Capital and Owners/Managers Meeting would take place on the next Monday and she encouraged anyone to attend that would like to.

10. **Announcement of next meeting:** Tuesday, March 15, 2022, at 10:00 a.m., 421 NW 13th Street, Suite 100 (OLERS) Conference Room, Oklahoma City, Oklahoma. Mr. Coffman also stated that there would be a break before the Administrative Hearing that would take place that afternoon and that the Enforcement Committee would be recusing themselves from that meeting.
11. **Administrative Hearing:** The Administrative Hearing was going to be held to discuss whether Arbuckle Title violated the requirement of having a physical presence in Love County upon issuance of their Certificate of Authority.

Mr. Johnston had handed out his exhibits without allowing review by the Prosecutor, Whitney Scimeca, so time was taken for her to go through the materials. She objected to all exhibits except 1 through 5.

Mr. Coffman called the meeting to order, and the roll was called. J. Thomas called the roll. Attending were: Darla Ringo, J Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Absent: Jeff Lower, Jeff Mapes, and Scott Ward, all members of the Enforcement Committee.

Joe Ashbaker introduced himself as the legal representative for the Board. He asked the attorneys to make an announcement for the record.

Whitney Herzog Scimeca introduced herself as the Special Prosecutor for the Board.

Wes Johnston introduced himself as representative for the Respondent.

Mr. Ashbaker explained the order signed by the Board Chairman, Mr. Coffman, allowing him to make administrative ruling from the bench to provide some expediency. He also pointed out that because of an error on the agenda, there was no allowance for an Executive Session which would enable the Board to deliberate in private. There is an option to either deliberate in the open meeting or postpone the hearing for at least three days. He asked for input from counsel to see if they had comments on the issue.

Ms. Yates asked for clarification on the postponement. She also asked for clarification of the Board's role in the hearing. Mr. Ashbaker explained that the Board would be acting as if in a bench trial where there is no jury but the Board acts as a collective judge. He then outlined the process for presentations and witnesses and how the Board would make a determination as to whether there had been a violation and any pursuant actions.

Mr. Johnston asked if the Board could at least move forward on the motion to dismiss. Ms. Scimeca and the Board agreed to move forward with the presentation of the motion to dismiss and make a determination on that matter. Mr. Ashbaker pointed out that the defense has the burden of proof on the motion to dismiss.

Mr. Johnston presented that the staff has made complaints against Arbuckle regarding an actual physical presence a misrepresentation on the part of the respondent on their

renewal application. He said that there has to be some rule or statute that Arbuckle has violated. He also said that if there is a rule, there has to be a strict construction in the Board's response. He said that the opposing counsel has said there is room for a broader construction, but the Supreme Court requires only strict construction. He says that there is an actual physical presence in Love County because it's not clearly defined. He listed several items with the statement of "everyone agrees to that" and that the only point that everyone does not agree on was that there wasn't someone there full time. He stated that the requirement of that someone be at the location full time is not specified and can't really be enforced and that it only needs to be present on the application so there's no violation of that requirement as it's written in the rules. He also stated that there was nothing untrue on the application therefore, the case should be dismissed.

Mr. Ashbaker asked Mr. Johnston whether the Board had the authority to interpret their own rules. Mr. Johnston said they did in general. Mr. Ashbaker stated that it appears that the basis for dismissal is that there is no judicable case because even if everything the Board presents is factual, there's still no violation.

Ms. Yates asked for clarification on their request for strict construction. Mr. Johnston pointed out the part of their brief that says it must be based without doubt within the letter of the law and cannot interpret it beyond its black and white form. She also asked about the initial application that was made and Mr. Johnston confirmed that he felt it was focused on the initial application for a Certificate of Authority and not the renewal. Ms. Scimeca confirmed that the application in question was the original application for a COA. She also pointed out that it was presented that the complaint is in regard to three things - there was a false statement in the application, there has been a violation of the rule, and the third was a misrepresentation to obtain a Certificate of Authority. Even if everything on the application is correct, there can still be a misrepresentation present.

Ms. Scimeca responded that only the motion to dismiss is being discussed at the current time. She said that it can only be dismissed if the case has no merits and there is no supportable claim or insufficient facts. That is not the case with this complaint. She stated that the burden to show these issues as true has not been met. She also stated that his attempted use of civil procedure is inappropriate because this complaint is governed by administrative procedure. She also pointed out that with regard to counsel stating that "actual physical presence" is not defined and can't be required because the Board has an understanding as to what that physical presence is. She stated that on several of his statement that there are several issues where "everyone agrees" that is not factual because there is no consensus of agreement. She covered the requirements for the approval of a Certificate of Authority. She asked that the Board not take the time factor into consideration when reviewing this motion to dismiss because time should not be impactful. She asked that they deny the motion to dismiss.

Mr. Ashbaker discussed the Board's ability to actually hear and act on a motion to dismiss. Mr. Johnston stated that he has yet to be informed of how exactly the company is supposed to have misrepresented themselves. Ms. Scimeca responded that there are two things, not just the misrepresentation there is both the misrepresentation and the actual

physical presence and therefore, you can't state that there's not one that provable and therefore neither is provable. She then discussed the presence of three locations and was assured that the location at 108 S 2nd would be the actual physical presence, but they never followed through on actually opening it. Two witnesses visited all three locations on two different occasions during business hours and none of the three locations were open.

Mr. Johnston says that there is nothing on the application that uses the phrase actual physical presence. Ms. Scimeca responded that it is in the law, it's in the rule because it is required that the Board review actual physical presence as one of the criteria.

Ms. Yates asked for clarification of the time period that there was supposedly no physical presence and it was confirmed to be from September 15, 2020 when the COA was issued through April 2021 when the investigation occurred.

Ms. Ringo asked which address was used on the original application. The answer was 108 S. 2nd. Mr. Johnston stated that during the meeting for approval of the COA Mr. Pollard stated that the location would be 114 W. Main St. Ms. Scimeca stated that the location question was asked two times during the original approval meeting in September and it was answered once by Ms. Smith as being the 108 S. 2nd location but it was asked again by Mr. Luttrull, a board member at that time and the answer was not as clear.

Ms. Yates stated that the matter is a violation from September 2020 through April 2021. Ms. Scimeca said that was part of the complaint but not the entirety of the complaint and that the complaint is regarding all three issues previously stated.

Mr. Ashbaker stated that the Board doesn't really have the authority to dismiss because it hasn't been granted through operation of law.

A motion was made by Ms. Yates to deny the motion to dismiss. Second by Mr. Koller. Motion passed.

Yeas: Darla Ringo, J Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

A motion was made by Ms. Ringo to continue the matter to the April Board Meeting on April 19, 2022. Second by Mr. McDowell. Motion passed.

Yeas: Darla Ringo, J Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

12. **Adjournment:** Mr. Coffman asked for a motion to adjourn the meeting. Motion was made by Mr. McDowell. Second by Ms. Ringo. Motion passed.
Yeas: Darla Ringo, J Thomas, Jeff Lower, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.